

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

04-CR-6059T

v.

**DECISION
and ORDER**

ANDRE GREEN,

Defendant.

By Report and Recommendation dated June 24, 2005, United States Magistrate Judge Marian W. Payson recommended that defendant Andre Green's motion to suppress tangible evidence be denied. Thereafter, on July 5, 2005, at defendant's request, defendant was granted an extension of time until July 22, 2005 to file any objection to the Magistrate Judge's Report and Recommendation. On July 25, 2005, three days after the objections were due, the court received a second request for an extension of time, and defendant was granted an extension of time to August 5, 2005. On August 8, 2005, again three days after the objections were due, defendant requested a third extension of time in which to file objections, and defendant was given an extension of time until August 19, 2005.

On August 22, 2005, 3 days after the third extension of time expired, defendant electronically filed his objections to the Report and Recommendation. In addition to failing to timely file the objections, defendant incorrectly filed the objections as a "motion," rather than as "objections" to the Report and

Recommendation. The defendant's error was corrected by the Clerk's office, which resulted in a docket entry indicating that the defendant's incorrectly filed motion had been terminated. Because it appeared as though the motion had been resolved, no further action was taken with respect to the objections.

Because the defendant's objections to Judge Payson's Report and Recommendation are untimely, I deny defendant's objections. Despite being granted three separate extensions of time, the objections were not timely filed. Moreover, even had the defendant timely filed his objections, I find that based on a de novo review of the record, and for the reasons stated by Judge Payson in her June 24, 2005 Report and Recommendation, defendant's motion to suppress should be denied.

For purposes of the Speedy Trial Act, due to the pendency of defendant's objections, and the improper filing of those objections, the time from June 24, 2005 through the date of this Order is excluded from the Speedy Trial Clock.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

Michael A. Telesca
United States District Judge

DATED: Rochester, New York
December 8, 2005